

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

**JOHN DOE #1, JOHN DOE #2, JOHN DOE #3,
JOHN DOE #4 and JOHN DOE #5,**

Plaintiffs,

vs.

AFFIDAVIT

**SYRACUSE UNIVERSITY, KENT SYVERUD, individually
and as Chancellor of Syracuse University, PAMELA PETER,
individually and as Assistant Dean of Student Rights and
Affairs and the Director of the Office of Student Rights and
Responsibilities, ROBERT HRADSKY, individually and as
Syracuse University Dean of Students and Associate Vice President
of the Student Experience, TERESA ABI-NADER DAHLBERG,
individually and as the Dean of the College of Engineering and Computer
Science**

Civ. Action No.
5:18-CV- 496

Defendants.

STATE OF NEW YORK)
COUNTY OF ONONDAGA) SS:

JOHN DOE #1, being duly sworn, deposes and says:

1. I am an African American student enrolled in the College of Engineering at Syracuse University ("the University"). I am part of a group of new members of the Tau chapter of Theta Tau, a national, professional, co-ed engineering fraternity that was, until April 21, 2018, a recognized chapter of Theta Tau ("the Chapter") on the Syracuse University campus. I make this Affidavit based on my personal knowledge of the facts and circumstances of this action.

**THE CONTROVERSIAL EVENT THAT IS THE BASIS OF THIS
LITIGATION WAS CONCEIVED, PLANNED,
PREPARED AND PERFORMED AS PURE SATIRE**

2. The Chapter's tradition of welcoming new members includes an annual event wherein new members write and present stories or skits which are intended as spoofs on existing

members of the fraternity. This tradition is known or referred to as "Pledge Porno." Historically, these stories or skits have taken the form of a satirical roast where new members exaggerate and poke fun at any or all existing members of the Chapter. New members roast every existing member by telling a story based on such factors as reputation within the house, notable conduct or specific personality traits. The stories can be sexual or non-sexual, but many have traditionally focused on members' dating success or lack thereof and their existing relationships.

3. Past performances have always been private events for the sole benefit of existing and new members. This year's event was no different. The new members were scheduled to present a version of "Pledge Porno" to existing brothers at the Chapter house on March 30, 2018. I, along with the other fifteen new members, was tasked with writing or preparing the material to be presented to the membership.

4. I am African American. The ethnic, racial and religious backgrounds of the other fifteen recruits included one who is Jewish, one from South America, one from Eastern Europe, one of Middle Eastern descent, someone who is half Asian and one Indian American. We quickly gathered after dinner at the Chapter house on the evening of March 30, 2018, for a joint exchange of ideas about who to roast and on what topics. As the name "Pledge Porno" suggests, most of the material we came up with focused on existing members' past and present relationships, challenges or successes.

5. The skits were performed in the basement of the Chapter house. There were approximately 25-30 members and all 16 new members. There were no individuals present who were not existing or new members of the Chapter. One member of the Chapter recorded the proceedings for members who could not attend the roast.

6. Our South American recruit agreed to be the narrator of the performance. He began by speaking in Spanish, his native language, to throw the members off and make them think the entire performance would be in Spanish.

7. The second skit, entitled “The Trilogies of Tri Kappa,” was based on a satirical fraternity headed by a racist who was trying to integrate members of his “once great” fraternity to “his newly formed white empire.” This imaginary fraternity known as Tri Kappa was the “main enemy” of Theta Tau. This story was intended to lampoon one Chapter member who was a known supporter of President Trump and a political conservative.

8. The main character in the story was presented by the new member portraying him as a red neck, “back woods” figure, who forced his pledges to undergo an “anointing” by taking an oath to “always have hate in [his] heart” for “niggers,” “spics” and the “fuckin’ kikes.” The new member portraying the “pledge” taking the oath in the skit was Jewish. It was evident to everyone in attendance who knew the individuals involved and referenced in the story how ridiculous and satirical it was for one member to be portrayed as a rabid racist in our Chapter which had twenty eight members with racial, ethnic and religious minority backgrounds, including me and other African American and Hispanic members. Although I did not participate in this skit, I observed it and laughed along with everyone else because it was exaggerated satire showing the ignorance and absurdity of actual racists.

9. The same new Jewish member who portrayed the imaginary pledge on his knees swearing to “hate” “kikes,” then referred to two other new members who were portraying Jewish members of Tri Kappa as “fuckin’ kikes” and told them to “get in the fuckin’ shower.”

10. Everyone present also understood the comic irony of having a *Jewish* member say he had “hatred” in his heart for “kikes.” Again, however, it was satire, which is defined as “the

use of humor, irony, exaggeration, or ridicule to expose and criticize people's stupidity or vices, particularly in the context of contemporary politics and other topical issues."

11. In another skit, the same new Jewish member referenced in ¶ 14 was portrayed as rendered "brain dead" and "retarded" as a result of "being chronically whipped" by his controlling girlfriend. The member referenced in the skit was mocked for constantly talking about how much he loved his girlfriend and intended to move with her to the United Kingdom. The story depicted the member not even noticing he was being "light rape[d]" as he sat in a wheelchair because he only "continue[d] to think and babble about his girlfriend."

12. There were several other skits – at least seven - which included offensive language and extensive references to and portrayal of sexual acts. The opening skit portrayed a sex act between a member and his dog who lived at the Chapter house. Other stories addressed notable facts about members' past and present dating histories including the inability of members to meet girls or perform sexually, some members' reputations as "skirt chasers," and references to members acting like girls when talking about "relationship" issues. A few of the skits included references to imaginary homosexual acts and feelings by or between members who were known to be close or to spend a lot of time together.

13. The skits did not constitute *actual* racism, anti-Semitism, homophobia, sexism and disrespect for the disabled. Rather, the entire focus of the skits was to create caricatures and exaggerate to be outrageous. In an effort to demonstrate how "whipped" one member was, we gave him a "disability" that does not exist – that is, becoming "brain dead" because of his girlfriend. To poke fun at our Trump loving member, we made him a stereotypical Southern, "red neck" in charge of a non-existent "white empire." And for an extra twist of irony, the Jewish guy was the one repeating the red neck's epithets aimed at other ethnic groups, including

fellow imagined Jews. No one watching these performances in context could possibly have interpreted them as anything other than what they were – satirical portrayals of offensive conduct and attitudes offered for entertainment with no intent to harm or harass anyone.

14. Notably, the performances were conducted in private and were never intended to be viewed by anyone outside the Chapter.

**REPORTS BY SYRACUSE UNIVERSITY TO ALL STUDENTS, FACULTY AND
STAFF REGARDING THE MARCH 30, 2018, ACTIVITIES TOGETHER WITH
UNAUTHORIZED RELEASE OF DE-TEXTUALIZED VIDEOS OF THE EVENT
HAS RESULTED IN TURMOIL ON CAMPUS**

15. Following the roast, an existing member of the Chapter posted a series of four videos documenting the event on a private Facebook group page for existing and new members. These recordings were private and intended to be accessible only by members of the Facebook group page.

16. Between March 30-April 18, 2018, no new members of the Chapter had any idea that the videos had been viewed and disseminated to persons outside the membership.

17. On or before April 18, 2018, without the knowledge or authorization of the Chapter, these recordings were accessed or viewed by an unidentified individual and disseminated to the University and others, including *The Daily Orange*, Syracuse University's campus newspaper. Portions of the recordings were thereafter posted on the websites of *The Daily Orange* and *Syracuse.com*, a digital version of the Syracuse Post Standard.

18. The recordings were never intended for public viewing or consumption. *The Daily Orange* and *Syracuse.com* have published and disseminated "select" portions of the four videos which depict the most salacious and offensive conduct and language. Specifically, the digital publications edited, redacted and added subtitles to parts of two videos to highlight the

racial and ethnic language used during the performances as well as the mock depiction of a person “disabled” by being “chronically whipped” by a controlling girlfriend.

19. Out of context, new members laughing and joking about hate for “niggers,” “spics” and “fuckin’ kikes” or pretending to “rape” someone in a wheelchair has been immensely upsetting and disturbing to the public and Syracuse University community. Since the release of the videos, hundreds of activists and members of the Syracuse University community have protested, made demands of the Administration and voiced their distress over the depicted scenes. Members and new members of the Chapter have been, among other things, 1) prohibited from attending classes or other academic pursuits; 2) fired from jobs and threatened with firing from research positions; 3) physically and verbally assaulted; 4) threatened with physical harm; and 5) forced to take refuge with friends or family to avoid public harassment.

20. However, none of this disruption and chaos in the University community or the lives of Chapter members was necessary. It was obvious from the outset that the language and conduct depicted in the videos, while undoubtedly offensive, was satire and not intended for public dissemination. Indeed, *The Daily Orange* stated on its website that the videos were obtained from a “secret” Facebook group called Tau of Theta Tau.

21. What happened here is that when presented with the videos, the University chose to vilify the Chapter and its members, sacrificing their legal and civil rights to “save face” in what was certain to and has become a public relations debacle. However, the University only has itself to blame for the chaos that has erupted on campus following release of the videos. The University and several administrators are responsible for sowing mistruths about the incident, and making false and defamatory statements about the Chapter and its members. In fact, the University incited unrest among students, activists, faculty and the public with baseless

accusations alleging the videos depicted actual sexual assault, physical violence and “grotesque hostility toward and mockery of people with physical, intellectual and other disabilities.

22. The following is a timeline of events that has occurred since word of the existence of the videos was released to the University and public on April 18, 2018:

- 11:05 am - the Chapter as well as Theta Tau, received notification via email from Pam Peter, the Director/Assistant Dean for the Office of Student Rights and Responsibilities (“OSRR”) that the Chapter was suspended on an interim basis pending a review by the Syracuse University Student Conduct System. The letter advised Theta Tau that it had engaged in “hazing of new members” in the fall of 2017 and “posted bias related videos in a private fraternity Facebook.com group.” The University stated Theta Tau was required to adhere to the directives and sanctions imposed by the suspension or “new” Code of Student Conduct charges would be filed “where expulsion was a possibility.”
- 11:34 am - Kent Sveryud, the Chancellor of the University, sent a campus-wide email to all students, staff and faculty falsely labeling Theta Tau as having engaged in words and behavior that was “extremely racist, anti-Semitic, homophobic, sexist and hostile to people with disabilities.” Sveryud said he was appalled and shaken and “deeply concerned for all members of our community.” He also notified the University community that Theta Tau had been suspended and a formal investigation had been launched to determine further legal and disciplinary action.
- 11:34 am – Teresa Abi-Nader Dahlberg, Dean of the College of Engineering, sent an email to all College of Engineering students stating she “echoed” Sveryud’s words and was in conversation with him about “next steps.”

- By mid-afternoon, Chapter members had reporters from the New York Times and other news outlets contacting them for comments about the breaking story.
- Later in the day, crews from *The Daily Orange* and Spectrum News staked out the house with camera crews.
- (approximately 6 pm) - A group of activists and students gathered at the Chancellor's residence and chanted in front of the chancellor's house. They marched down Walnut Avenue to the Chapter house shouting and protesting, based solely on the unproven allegations and judgments about the Chapter that Sveryud had disseminated to the entire University community via email. They held signs that read "Where's the video? Release it." The students then moved on to Hendricks Chapel where they continued their protest.
- April 18, 2018 (shortly after 9 pm) – both *The Daily Orange* and *Syracuse.com* post the same edited, redacted and subtitled versions of one video depicting the skits involving the dog, the “racist oath” and the “kikes” being ordered to take showers.
http://www.syracuse.com/sunews/index.ssf/2018/04/watch_syracuse_university_frat_video_published_by_student_paper_shows_offensive.html.
- April 18, 2018 (about 10 pm) – the NYTimes digital version posted an article about the suspension: <https://www.nytimes.com/2018/04/18/nyregion/syracuse-fraternity-suspended.html>.

23. Over the next five days, one Chapter member was physically assaulted at the Biergarten in downtown Syracuse based on his membership in the fraternity. Although the University stated it would not identify the names of the students involved in the incident or

release the video, the University took no steps to ensure the names or identities of the students in the video were not disseminated to the public. Numerous people “doxed” Chapter members present during or involved in the skits by publishing their names on University and social media outlets. Worse still, the University, through its Department of Public Safety, and Office of Residence Life, took no disciplinary action or other steps against students even after Chapter members reported being openly threatened with bodily harm and property damage to the house on University and social media outlets.

24. Dean of Students, Robert Hradsky, erroneously stated the video depicted “sexual and relationship violence” when by any objective measure, the new members performing in the video were parodying and miming sexual acts. While the conduct was offensive when viewed out of context, the members did little, if anything to make the performances seem “real.” In fact, it was obvious new members were merely simulating sex acts for the purpose of satire and entertainment.

25. On Friday, April 20, 2018, the Chapter published a letter of apology and explanation on its website to the entire Syracuse University community. In the letter, the Chapter apologized for those affected by the offensive speech and conduct, but we explained that the video was a sketch depicting new members roasting existing members. With respect to the “racist oath” video, the Chapter explained that we had used a fictional, racist character to satirize a conservative Republican member.

26. The Chapter apologized profusely for the impact of the video, but insisted we are not racists and that the video had to be understood in context. Specifically, we said we were not laughing “in concurrence” with racist, sexist and homophobic beliefs, but because racism, sexism and homophobia are “so wrong that they are laughable.”

27. Notwithstanding its apology for the offense of the video out of context, the University expelled Theta Tau *permanently* on April 21, 2018.

28. On Saturday, April 21, 2018, I, along with the other 15 new members and two existing members, received an identical letter from Eric Nestor, Associate Director of OSRR, advising us that we were in violation of the following provisions of the Code of Student Conduct based on an incident that occurred *during the spring 2018* semester:

- *Physical harm or threat of physical harm to persons*, including but not limited to: assault, sexual abuse or other forms of physical abuse;
- Harassment – whether physical, verbal or electronic, oral, written or video – which is *beyond the bounds of protected free speech, directed at a specific individual(s)*, easily construed as “fighting words,” or likely to cause *an immediate breach of the peace*.
- Conduct – whether physical, verbal or electronic, oral, written or video – which *threatens the mental health, or safety of any person or persons including, but not limited to hazing, drug or alcohol abuse, bullying and other forms of destructive behavior*;
- Illegal use, possession, purchase, distribution, manufacture or sale of *alcohol, drugs or controlled substances* or any other violation of the Syracuse University Policy on Alcohol, Other Drugs and Tobacco;
- Violation of unspecified policies, rules or regulations in the Student Handbook or other official University publications or agreements.

29. The letter advised me and the others that an “informal resolution meeting” was scheduled (mine is set for Thursday, April 26, 2018 at 8:30 a.m.) to discuss the matter and

determine whether formal proceedings should be instituted. The letter also recommended that I and the others obtain a procedural adviser and/or seek advice and procedural support from the Office of Student Assistance for the OSSR meeting and Code of Conduct process.

30. The University is presently in its last week of classes for the semester. Over the next two weeks, students will be taking final exams. I wished to take advantage of the University's resources to assist with the unfamiliar discipline process. Based on the need for time to schedule those meetings and the added stress and pressure of the end-of-semester schedule, I requested a postponement of my informal resolution meeting. My request was denied.

31. Several other new members who received notices regarding Code of Conduct violations and informal resolution meetings were also denied the opportunity to postpone.

32. When *The Daily Orange* and *Syracuse.com* published a second video, on the evening of April 21, 2018, which showed the skit involving the "disabled" student in the wheelchair, http://www.syracuse.com/sunews/index.ssf/2018/04/watch_2nd_video_of_syracuse_frat_sketch_published_by_student_paper.html, Chancellor Kent Syverud falsely stated, "I believe the second video *depicts egregious behavior, including sexual assault, violence and discriminatory mockery and hostility* toward people with disabilities that is unacceptable and deeply harmful in many ways." The video did not depict actual examples of these egregious acts, but rather, was a *parody* of people committing the offensive conduct.

**RATHER THAN ADDRESS THE SITUATION IN A REASONABLE, JUDICIOUS
AND FAIR WAY, THE UNIVERSITY HAS PERPETUATED THE CONTROVERSY
AND VIOLATED THE RIGHTS OF CHAPTER MEMBERS**

33. The next day, Sunday, April 22, 2018, I, along with the other 15 new members and two existing members, received an identical email from Michelle Wheatley, Vice Chancellor

and Provost from the Office of Academic Affairs and Hradsky. The email advised me and the others that while the “conduct process” moved forward, we would not be allowed to attend classes, labs or academic functions. While the email said “academic arrangements” would be made on our behalf, the University has only begun to advise me of what those arrangements will be. I am in danger of losing all or some of my academic credits this semester if I cannot properly prepare for and take my exams.

34. Since I am not graduating, there is no reason the University is required to hold Code of Conduct proceedings before final exams. Although I have emailed and called the Office of Academic Affairs and Hradsky at the Division of Enrollment and the Student Experience, I have received no information from the University regarding how or if I will be allowed to complete my academic studies and exams this semester.

35. Currently, I, along with the other plaintiffs and remaining Chapter members served with Code of Conduct violations, have been placed in an ambiguous “quasi-suspension” by any University policy. There is no provision in the Student Conduct System Handbook or the Syracuse University Student Handbook to prohibit students from attending class while Code of Conduct procedures are proceeding in the absence of formal suspension which has not occurred here. This expedited and unauthorized “quasi suspension” procedure is designed to avoid providing due process to the affected Chapter members and effectively expel me and the other plaintiffs before the end of the semester. We have asked for our Conduct files which we are entitled to in advance of the hearing, but the University has said it may take weeks to obtain them. I have called the Office of Student Assistance and they have no advisers available to counsel or assist me or the others in this complex and stressful process. We are being forced

through a shortened disciplinary process without the benefit of knowing the evidence the University has against us or a University representative to advise us.

36. The actions of the University in placing me and other members in a quasi suspension state are designed to expedite disciplinary procedures in order to suspend or expel me. I will not recover the loss of the time invested in this very challenging semester of course work or escape the stigma of ultimately being suspended by the University. A preliminary injunction is necessary to prevent the University from following through on its plan for suspension or expulsion before due process and a proper hearing can occur.

37. The University has failed to follow its own disciplinary policies in its attempt to short circuit our rights to fairness, notice, and the opportunity for a meaningful hearing. Without a preliminary injunction ordering the University to follow its own disciplinary policy prior to suspending me, reinstating my right to attend class, take exams and finish the semester, I will suffer irreparable harm both to my academic future and my reputation.

38. The University and its officials continue to label me and the other affected Chapter members, including plaintiffs, as racist, anti-semitic, homophobic, sexist, and hostile to people with disabilities despite clear evidence showing the entire incident was nothing more than a parody. Indeed, DA Fitzpatrick was quoted as saying while the video may depict “rank stupidity, . . . luckily stupidity is not a crime.”

39. Insofar as the substance of the of the alleged Code of Conduct violations, they were not based on any fair view of the actions depicted in the video. All new members participated voluntarily in some fashion for the production of the performance. In no way were the skits and stories performed by new members a form of “hazing” or bullying. Hazing is defined in the Code of Conduct as any action that “intentionally or recklessly causes or poses a

substantial risk of harm to the mental or physical safety of one or more persons.” If anything, the event was the exact *opposite* of hazing since new members had the opportunity to poke fun at existing members. However, the entire incident was based entirely on raunchy humor and exaggerated satire.

40. At no time did anyone involved in the skits physically harm or threaten a participant or observer. At no time did I observe evidence that any participant or observer felt upset or unsafe as a result of the performance.

41. The reason why I and the others in attendance did not feel unsafe or threatened is because we were secure in our knowledge that the Chapter is not a racist organization. In fact, we are demonstrably the most diverse fraternity on campus. Theta Tau in general and the Chapter in particular accept members of *all* racial, ethnic and religious backgrounds unlike some other more exclusive fraternities on campus at Syracuse University.

42. The Syracuse Student Conduct System Handbook outlines harassment as follows: "Harassment -- whether physical, verbal or electronic, oral, written or video -- which is beyond the bounds of protected free speech, directed at a specific individual(s), easily construed as 'fighting words,' or likely to cause an immediate breach of the peace." (p. 3 of Handbook). On that same page, the Handbook also defines harassment as "intentional, unwanted and unwelcome words or conduct directed at a specific person that alarms, threatens, or causes fear for that person."

43. The Chapter members' actions fall well outside the scope of the University's understanding of harassment. To date, the only people complaining about the content of the skits were people who were not present. The performance was private, we did not broadcast the skit performance to the public and the videos were obtained and released without our knowledge or

authorization. More specifically, the language used did not target any specific individuals or groups, the alleged “hate speech” was clearly parody which is protected speech under the First Amendment, and the words could not possibly be considered actionable as “fighting words.” It was *satire* by any reasonable view of the facts.

44. In addition to constituting “fighting words,” unprotected speech must be likely to cause “immediate breach” of the peace according to the Student Handbook. No Chapter members felt they were harassed by the performance and it certainly had no “immediate” impact on campus. It was not until weeks later that the video was leaked to the Syracuse University community and protests erupted. Under no reasonable view can it be said that we “harassed” students or community members unaffiliated with the Chapter by engaging in offensive conduct when the affected persons were not present or the subject of the video.

45. I saw no evidence that anyone involved in the skits verbally harassed or threaten a participant or observer. While we *portrayed* people and situations in the skits that may have suggested or involved joking about racism, anti-Semitism, homophobia, sexism and disrespect for the disabled, Chapter members are not racist, anti-Semitic homophobes or misogynists nor do we hold discriminatory views toward disabled persons. Indeed, if the participants actually held the attitudes depicted in the skits, the Chapter would be the *last* fraternity at Syracuse University those members would join given the racial, ethnic, religious and co-ed composition of our membership.

46. Insofar as the charge for illegal use of drugs or alcohol, in one skit, a new member used an empty “4 Loko” can as a prop. However, no one involved in the skit actually drank the 4 Loko, nor was drinking alcohol or consuming drugs part of any other skit. I did not drink

alcohol, ingest drugs or controlled substances during the event nor did I observe any new or existing member doing so. As far as I could tell, everyone in the house was completely sober.

47. In its Student Handbook, the University includes “ Student Rights and Responsibilities,” which includes the right to:

- “Speech/Expression/Press. Students have the right to express themselves freely on any subject provided they do so in a manner that does not violate the Code of Student Conduct. Students in turn have the responsibility to respect the right of all members of the University to exercise these freedoms;”
- “Fundamental Fairness. Students have the right to fundamental fairness before formal disciplinary sanctions are imposed by the University for violations of the Code of Student Conduct—as provided in the published procedures of the University’s Conduct System or other official University publications. Students have the right to written notice and the opportunity for a hearing before any change in status is incurred for disciplinary reasons unless a significant threat to persons or property exists”; and
- “Students have the right to expect a reasonably safe environment supportive of the University mission and their own educational goals. Students have the responsibility to protect and maintain that environment and to protect themselves from all hazards to the extent that reasonable behavior and precaution can avoid risk.”

48. In contrast, while students have the right to assemble and protest, they are prohibited from “threaten[ing] the health or safety of any person. Chief of the Syracuse University Department of Public Safety stated, we had been prohibited from attending class “[o]ut of an abundance of caution and ongoing concern for our campus community.” However, he did not identify any threat to the public safety or welfare of any individuals posed by Chapter members attending class. In fact, the only people that have been threatened since this controversy began on April 18, 2018, are Chapter members.

49. The University's handling of this controversy has been nothing short of outrageous with regard to me and my fellow plaintiffs and Chapter members. While we have been served with baseless charges of Code of Conduct violations, countless students have made harassing and physical threats to us on University and social media. While Administrators at the University have issued dozens of statements supporting protesters, vilifying Theta Tau and the conduct in the video, they have offered no warnings or Conduct violations to students making threats.

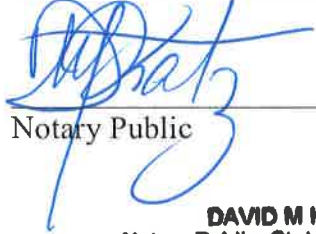
50. While the Department of Safety has a patrol car stationed outside our house, the Director of the Department of Safety stated that the officer was only there to protect Chapter members who were not present during the skits. His public statements suggest to the Syracuse University community that only the un-involved students are worthy of protection. By taking no action to quell the growing protests and "mob mentality" running rampant on the campus, the University has allowed this controversy to fester. Our safety and academic futures are being jeopardized to ensure the University saves face.

51. The actions of the University and defendant Administrators have and will continue to endanger my health and safety and the health and safety of Chapter members who are being threatened by fellow students, deprive me of invaluable educational opportunities, irreparably harm and defame my reputation and character, cause extreme emotional distress and cause permanent, irreparable damage to my academic future.

/s/

JOHN DOE #1

Sworn to & subscribed before me
this 24th day of April, 2018.



Notary Public

DAVID M KATZ
Notary Public, State of New York
No. 02KA6370385
• **Qualified in Onondaga County**
Commission Expires 01/29/2022